

**National Disability Insurance Agency
submission to Discussion Paper: Independent
Review of the *National Disability Insurance
Scheme Act 2013* (Cth)**

October 2015

CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	4
CONTEXT	4
OBJECTS AND PRINCIPLES.....	4
DESIGN OF THE LEGISLATIVE FRAMEWORK.....	5
The CEO's power to specify guidance on certain implementation and operational matters	5
Full Scheme rollout.....	6
BECOMING A PARTICIPANT.....	7
Administration of access requests during transition to full scheme.....	7
Disability versus chronic health conditions.....	8
PARTICIPANT PLANS	9
REGISTERED PROVIDERS OF SUPPORTS	10
NOMINEES	11
REVIEWABLE DECISIONS	11
COMPENSATION AND DEBT RECOVERY	12
Compensation	12
GOVERNANCE.....	13
The wider governance structure	13
The role of the CEO	13
Reporting	13
OTHER MATTERS	14

EXECUTIVE SUMMARY

The National Disability Insurance Agency (Agency) welcomes the opportunity to make this submission to the independent review of the *National Disability Insurance Scheme Act 2013* (Cth) (Act) and rules.

The National Disability Insurance Scheme (NDIS or Scheme) exists for people with disabilities, their families and their care givers. The Agency – enabled by the legislation – exists to deliver the Scheme for these citizens on behalf of all shareholder governments. Any review of the legislation should focus on the needs of people with disabilities, their families and care givers, and the methods of shareholder governments best providing for these citizens.

Within this context of the Agency being an implementation body, this submission deals only with matters of implementation as they impact citizens and shareholder governments. The Agency does not speak on behalf of people with disability, and submits that the review should be conducted through the lens of what is in the best interests of Scheme participants. In developing this submission the Agency has specifically taken into account:

- The impact of the Act and its implementation on participants, people with disability; and their families and care givers;
- The way the Act operates to support the financial sustainability of the Scheme; and
- The way the Act operates to support the effective and efficient administration of the Scheme and Agency, especially in anticipation of full scheme rollout.

The Agency has also considered the review terms of reference in the context of the Agency's practical experience in implementing the Scheme under the Act, with a focus on elements of the Act that are critical to the Agency's administration of the Scheme during the rollout of full scheme from 1 July 2016. The Agency's submissions are focused on the issues identified in the terms of reference, and in particular areas where the Act could be amended to:

- Simplify its operation;
- Increase the efficiency of the Scheme and provide greater clarity for participants, the Agency and others;
- Ensure the Agency has the capacity required to control costs; or
- Ensure it interacts appropriately with other legislation.

The Agency's experience of the trial period of the Scheme to date suggests that the Act has operated sufficiently for the Agency to establish the Scheme in the time frame required by bilateral agreements, within the funding envelope provided, and to a high level of satisfaction of Scheme participants. The Agency key submissions address the following themes:

- Preparation for the period of transition to full scheme and the administrative and implementation challenges unique to that period in the Scheme's life;
- Clarification of the circumstances in which the CEO may specify guidance in operational guidelines, particularly with respect to 'reasonable and necessary supports';
- Greater clarity over the application of the access criteria, and in particular the disability requirements, to people with chronic health conditions;
- Amendments to the provisions around the planning process to give greater practical weight to the need to take an insurance-based approach in planning;
- Greater legislative clarity around the provider registration process and how it is intended to interact with existing state and territory regimes;
- Recognition of the decision-making continuum actually experienced by people with disability and refinement of the provisions around nominees;
- Modification of the compensation regime to achieve more equitable outcomes among participants and ensure Scheme costs are appropriately controlled;
- Better alignment of the information gathering powers with the functions of the Agency and the objects of the Act.

INTRODUCTION

1. The Agency's submission is structured by referenced to the specific issues and questions identified in the Independent Review of the Operation of the *National Disability Insurance Scheme Act 2013* (Cth).
2. The submission also includes some brief background information to describe the context in which the Agency's submission is being made, and in particular the Agency's practical experience of implementing the Scheme under the Act to date.

CONTEXT

3. The Act establishes both the Scheme and the Agency.
4. In its second year, the Agency continued to create a stronger and more sustainable Scheme as a better way of supporting Australians with disability.
5. The trial phase is providing the Agency with important knowledge that is informing the transition to full scheme while building the infrastructure that will make the transition possible.
6. Most importantly, participants are experiencing increased opportunities to live ordinary lives and fulfil their goals and aspirations.
7. As at 30 June 2015, 19,817 people have become participants in the Scheme (107 per cent of the bilateral target) and 17,303 of these participants have an approved plan (94 per cent of the bilateral target).
8. In 2014–15, \$479.9 million of support was provided to participants. Since the beginning of the trial on 1 July 2013, the Scheme has committed \$952.8 million of support to participants with approved plans. Full scheme costs are expected to be within the funding envelope.
9. Satisfaction levels among participants in the trial sites remain very high—95 per cent of surveyed participants found the planning process either 'good', or 'very good'.
10. This practical experience informs the Agency's submission to the independent review of the Act.

OBJECTS AND PRINCIPLES

1. Do the objects and principles of the NDIS Act provide a sufficient basis for giving effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities?

11. In implementing the Scheme the Agency has found the principles-based nature of the Act to be very effective. The objects and principles in sections 3 and 4 support work practices that are consistent with the spirit of the Scheme, and provide a vocabulary for the Agency to have an ongoing conversation with participants and other stakeholders about how the Scheme works.
12. This has been particularly valuable as the Scheme starts to change and shape the way people view disability supports. By way of example, express acknowledgment of objects including choice and control for people with disability section 3(1)(e), the insurance-based approach to supports section 3(2)(b), and the interaction between the Scheme and mainstream services section 3(3)(d) provides a common vocabulary about what the Scheme is set to achieve.
13. The Agency would not recommend any changes to the way the principles and objects are handled within the Act.

DESIGN OF THE LEGISLATIVE FRAMEWORK

2. Does the design of the legislative framework (i.e. high level primary legislation supported by detailed NDIS Rules) enable government to further the objectives and principles of the NDIS Act?

14. The legislative framework has provided a stable base from which to implement the Scheme. This has provided assurance and confidence to people with disability and the sector while changes to the Rules has allowed the Scheme to be adapted as needed (such as to accommodate new trial sites).
15. There are two areas in which the Agency believes the legislative framework could be enhanced to allow for both the more efficient administration of the Scheme and to ensure the Agency has the required ability to control costs:
 - Clarification of the circumstances in which the CEO can specify how specific elements of the Act and rules are to be implemented in practice; and
 - Recognition of the changed requirements of the Scheme during the transition to full scheme.

The CEO's power to specify guidance on certain implementation and operational matters

16. The Act and Rules are silent on significant amounts of implementation and operational detail.
17. In practice the CEO of the Agency provides guidance to decision-makers on how to apply the criteria specified in the Act and rules. This guidance is set out in operational guidelines, which are publicly available on the Agency's website.
18. In most circumstances this arrangement is both practical and effective in assisting the Agency to implement the Scheme, and transparent in that the way in which the Agency makes decisions is publicly available.
19. However, the Agency's emerging experience during the trial period of the Scheme indicates that it would provide greater clarity to Agency decision-makers and to people with disability affected by the Agency's decisions, as well as the Administrative Appeals Tribunal and courts, if the Act or rules specified more clearly the circumstances in which the CEO is permitted to specify how particular matters are to be implemented in practice.
20. By way of example, paragraph 7.2 of the current *National Disability Insurance Scheme (Becoming a Participant) Rules 2013* made under s 209(2A) of the Act expressly permits the CEO to specify, in operational guidelines, assessment tools that may be used for determining whether a person meets the disability requirements or early intervention requirements in sections 24 and 25 of the Act.
21. A similar explicit recognition of the CEO's capacity to provide guidance would, in the Agency's view, be beneficial in the following areas connected with reasonable and necessary supports:
 - Allowing the CEO to specify in operational guidelines the matters, including evidence, that may be used for the purpose of deciding whether a support will be, or is likely to be, effective and beneficial for a participant under section 34(1)(d) including for the purpose of deciding what constitutes current good practice. This will allow the Agency to leverage experience of the trial and research conducted as part of the Scheme to provide greater transparency; and
 - Allowing the CEO to specify in operational guidelines methods or criteria by which the decision-makers could determine that particular supports represent value for money for the purposes of section 34(1)(e). This will provide greater clarity for decision-makers and could be used to help participants who self-manage act as informed consumers.
22. Further information on this issue is provided in the section on participant plans below (see paragraphs 44 to 47).

Full Scheme rollout

23. The Act is drafted to give effect to the fully implemented Scheme while the rule making powers allowed the NDIS rules to limit the Scheme for the period of trial (or launch as it is described in the Act).
24. This can be seen most clearly in the way the provisions concerning access to the Scheme operate. The Act sets out the access criteria as they will operate in full scheme, allowing anyone in Australia to make an access request at any time, and the rules create specific age and residency requirements which in effect create the trial sites.
25. This design means that the legislative framework is very effective during trial, and the Agency is confident it will be very effective during full scheme. The most significant implementation challenge will be during the period between those two stages.
26. To put the challenge in context, during the first two years of trial 19,817 people became participants in the Scheme, and it is estimated that 315,000 people will become participants over the course of first two years of full scheme rollout from 2016-18.
27. In order to meet the expectations of governments as set out in bilateral agreements, during the rollout of full scheme the Agency will be required to make approximately 12,000 decisions each month.
28. The Agency considers that the legislative framework would better support the effective and efficient administration of the Scheme during full scheme rollout if provision is made for specific rules to apply during the period from 1 July 2016 to 30 June 2019. These suggestions for substantive changes will be discussed at the appropriate points in this paper.

BECOMING A PARTICIPANT

3. How well do the access criteria enable government to further the objects and principles of the NDIS Act? With particular reference to the following principles:

- a. People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development**
- b. People with disability should be supported to participate in and contribute to social and economic life to the extent of their ability**
- c. People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime**

4. How clearly defined are the access criteria?

5. What amendments could be made to the legislative framework (if any) to:

- a. Enhance the clarity of the access criteria?**
- b. Improve the effectiveness and/or efficiency of the access request process?**

29. The Agency considers that there are two areas where the provisions of the Act dealing with access could be improved to enhance the effective administration of the Scheme, allow the Agency to manage costs more effectively, and improve alignment with state and territory legislation and programmes.
30. The two main areas of improvement relate to:
- The administration of access requests during the period of transition to full scheme; and
 - Clarification of how the disability requirements in section 24 of the Act operate for people with chronic health conditions.

Administration of access requests during transition to full scheme

31. Key features of the access arrangements at full scheme are:
- Anyone can make an access request at any time;
 - Making an access request is the only way a person can become a participant;
 - Once an access request is made, the Agency can require information be provided to assist in making a decision; and
 - Once an access request is made it must be considered by the Agency and either decided or additional information sought within 21 days.
32. For trial, this access process remains unchanged but an additional layer is added to regulate the flow of funded supports by controlling the timeframes within which participant plans are developed. This is done through a series of phasing rules made under section 32A of the Act, which set out the timeframe within which the Agency must commence facilitating the preparation of a participant's plan.
33. The Agency has experienced a significant administrative and communications challenge during trial because the timing for access requests is not specifically aligned with the phasing arrangements for the preparation of participant plans. This has meant that a person can make an access request, and the Agency must receive and determine that request, potentially well in advance of the timeframes identified in the phasing rules for the preparation of the person's plan.
34. This misalignment has been a source of confusion for participants and their families who are in the situation of having access to the Scheme as participants but not access to any funded supports under the Scheme.

35. For the limited period of full scheme rollout the Agency submits that the Act and rules should be amended and aligned so that a person can only make an access request, and the Agency is only required to process an access request, in a timeframe that aligns with the phasing arrangements agreed by governments in bilateral agreements and given effect in the phasing rules made under section 32A of the Act.
36. Put another way, it would be preferable if the access and phasing arrangements could be aligned so that a person could make an access request to become a participant, and the Agency would be obliged to determine the request, only at a time when the person is scheduled to be phased into the Scheme in accordance with bilateral agreements and the phasing rules made under section 32A.
37. This would have obvious benefits from an administrative perspective as it would allow the Agency to meet the expectations of governments as reflected in bilateral agreements. More importantly, it would provide a more logically understandable process for people with disability joining the Scheme which, aligned with clear communication around the schedule of the rollout, would provide a clear timetable for both becoming a participant and receiving funded supports under a plan.
38. The Agency also submits that a minor amendment should be made to either section 60 or section 55 to clarify that the CEO of the Agency may request, and states and territories may provide, information about potential participants to the Agency for the purposes of assisting the Agency to perform its function of facilitating access to the Scheme for such people. This would help to facilitate a smoother transition for potential participants who are currently receiving supports through state and territory programmes, and who are due to be phased into the Scheme in accordance with bilateral agreements and phasing rules made under section 32A of the Act, with minimal unnecessary disruption and intrusion.

Disability versus chronic health conditions

39. The experience of implementing the access criteria during trial has indicated that there would be real benefit in giving both people with disability, the Agency, and stakeholder governments greater clarity around how the disability requirements are intended to operate for people with chronic health conditions. This would provide better certainty for people with health conditions about where their supports will be provided.
40. The Act contains no definition of 'disability' and the usual methods of legislative interpretation do not provide much clarity because of the way the drafting of section 24(1)(a) includes impairments as a separate element to the disability itself. This means that there is no clear distinction between disability (which is unarguably supported by the Scheme) and health conditions (which the Agency had always expected would continue to be supported through the health system).
41. The AAT provided some guidance in *Re Mulligan and National Disability Insurance Agency* (2014) 140 ALD 685 on the interpretation of section 24(1)(e), indicating that the better interpretation of section 24(1)(e) is that it refers to all supports, including those general supports in Chapter 2 that are intended for all Australians. This subsection therefore cannot be relied on to provide guidance on the application of the disability requirement to people with chronic health conditions.
42. The Productivity Commission, in its report on Disability Care and Support, based the current funding model of the Scheme on 411,250 people with having permanent disability (as at 2009) (Tier 3). This figure did not accommodate for people with a constellation of impairments caused by chronic health conditions, such as diabetes and obesity, being accommodated in those calculations. A lack of clarity around the application of the disability requirement poses a real risk to the financial sustainability of the Scheme.
43. The Agency submits that section 24 should be amended to provide clear guidance on the intended scope of access to the Scheme in relation to chronic health conditions. One way this could be done is by importing into the disability requirements in section 24 the kind of principles around interfaces with other service systems set out in relation to reasonable and necessary supports in section 34(1)(f).

PARTICIPANT PLANS

6. How well does the legislative framework's definition of what constitutes 'reasonable and necessary supports' support the independence and social and economic participation of people with disability?

7. What amendments could be made to the legislative framework (if any) to:

- a. Improve the effectiveness and/or efficiency of the participant planning and assessment process (include review)?**
- b. Ensure the NDIA has the required capacity to control costs in relation to participant plans?**

44. In relation to the issue of what constitutes 'reasonable and necessary supports', this submission has already noted that it would be beneficial to clarify the circumstances in which the CEO may specify guidance in operational guidelines (see paragraphs 16 to 22).
45. In particular, the Agency submits it would be beneficial to allow the CEO to specify in operational guidelines:
- The matters, including evidence, that may be used for the purpose of deciding whether a support will be, or is likely to be, effective and beneficial for a participant under section 34(1)(d) including for the purpose of deciding what constitutes current good practice; and
 - The methods or criteria by which the decision-makers could determine that particular supports represent value for money for the purposes of section 34(1)(e).
46. The Agency's emerging experience during the trial period of the Scheme indicates that it would be beneficial for both Agency decision-makers, and to people with disability affected by the Agency's decisions, as well as the Administrative Appeals Tribunal and courts, to have clearer guidance on these matters.
47. In *McCutcheon and National Disability Insurance Agency* [2015] AATA 624 (21 August 2015) the AAT set aside a decision of the Agency and substituted a new decision which included chiropractic treatment as reasonable and necessary supports in the participant's plan. In doing so the AAT noted that the Act and rules do not limit the kinds of evidence that may be taken into account for the purpose of determining whether a support is beneficial or give guidance about the relative weight that should be given to different kinds of evidence. The AAT also observed that the Act and rules are silent on what is meant by 'current good practice'. Having regard to these issues, the Agency submits it would be beneficial to allow the CEO to specify additional guidance on these matters in operational guidelines.
48. The operation of the Act and the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules) together gives the Agency considerable flexibility to tailor the planning process to best suit the needs of individual participants.
49. The implementation challenge for the Agency has been around the appropriate balance between choice and control and the insurance-based approach and financial sustainability of the Scheme. The insurance-based approach is critical to both the ability to control costs over the long term and evidence gathering around the efficacy of particular supports for achieving outcomes.
50. There is considerable flexibility built into the Plan Management Rules and the Agency would only suggest that three substantive changes would be required to give greater practical weight to the insurance-based approach in planning:
- The addition of a principle in section 31 of the Act highlighting the importance of taking an insurance-based approach to planning. This will help in providing context to the planning conversation for participants, their supporters and also providers;
 - Amendments to either payment or acquittal processes for NDIS amounts set out in the Rules to give the Agency visibility of the use of supports in plans that are self-managed to allow information to be gathered about outcomes and the efficacy of supports in achieving outcomes; and

- Clarification of the considerations to which the CEO should have regard in deciding whether to review a plan under section 48(2). Both participants and decision-makers would benefit from having clearer guidance on when a plan should be reviewed before the scheduled review. To give supports enough time to have an effect the Agency would support reviews taking place only where the participant's circumstances had changed or as on the date specified in a plan under section 33(2)(c).

REGISTERED PROVIDERS OF SUPPORTS

- 8. How well does the legislative framework (including, but not limited to, the provider registration requirements) enable government to promote innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports to people with disability?**
- 9. Do the registration requirements strike the right balance between supporting principles of choice and control, including in relation to taking reasonable risks and the rights of people with a disability to freedom from abuse, neglect and exploitation?**
- 10. How clearly defined is the NDIA's role in the registration of providers?**
- 11. What amendments could be made to the legislative framework (if any) to enhance?**

51. Registered providers are an integral component of the Scheme as they are part of the mechanism that promotes innovation, quality and effectiveness within the disability support sector. To date approximately 2,300 providers currently either managing participant plans or providing a diverse range of supports to participants.
52. The Agency would welcome greater legislative clarity around the purpose of the registration process and how it is intended to interact with existing State and Territory regimes. Our understanding, informed by bilateral agreements between governments, is that the registration process facilitates payment under the Scheme for Agency managed plans but is otherwise not intended to interfere with choice and control by participants.
53. The current legislative regime does not appear to have been designed for the purpose of either encouraging innovation or ensuring quality assurance and safeguards:
 - The registration process applies only to providers used in Agency managed plans;
 - The design of the Scheme places contractual power in the hands of individual participants and not in the Agency; and
 - The process for revoking registration is lengthy with checks and balances that do not lend themselves to swift action to address serious failures in quality or safeguards (for example, the provider must be provided with 28 days in which to make a submission during which time the provider can continue to provide supports).
54. Instead of trying to use the registration process in this way, the Agency registration process is designed to minimise unnecessary regulation and barriers to entry to the sector. The Agency uses other mechanisms to encourage innovation and implement individualised safeguards for participants. These mechanisms are primarily contained in the Plan Management Rules 2013, such as the ability to describe supports specifically, and allow for a more nuanced approach by the Agency that is based on individual circumstances.
55. The question of the future role of the Agency in quality assurance and safeguards is considered a policy question. We assume that if the role of the Agency were to change then the Act, especially the powers of the Agency, would be reconsidered in light of that change in policy.

NOMINEES

12. How well do the nominee provisions provide choice and control to, and protect the rights and wishes of, people with disability?

13. What amendments could be made to the nominee provisions (if any) to:

- a. **Enhance effectiveness and/or efficiency**
- b. **Ensure the legislative framework interacts appropriately with State and Territory legislation?**

56. Implementing the nominee provisions in the Act has posed some challenges for the Agency. The Act sets up a clear dichotomy of a participant either making their own decisions (independent decision-making) or having a representative make decisions for them (substitute decision-making). This dichotomy, while legally effective, does not reflect the lived experience of there being a continuum of decision-making capability that includes supported decision-making and co-decision making.
57. Because of this clear dichotomy the implementation has not struck a cord with many participants and their carers. At each end of the continuum the implementation of nominees is straightforward but for the participants in the middle there would be benefit in legislatively recognising the role of supporters.
58. The Australian Law Reform Commission's (ALRC) report on Equality, Capacity and Disability suggested the introduction of a 'formal supporter' in the Act, to formalise the role played by nominees as supporters. This is a recommendation in the ALRC's report on Equality, Capacity and Disability, and encompasses the Commonwealth decision-making model, also recommended by the ALRC. The Agency believes there would be value in this inclusion in terms of furthering the objects and principles of the Act, especially in relation to section 4(8) that people with disability have the same right as other Australians to determine their own best interests.
59. In relation to substantive changes to the current regime, the Agency recommends that the power in section 90 be expanded to allow the CEO to remove or suspend a nominee if that person ceases to be the guardian of the participant. This will bring the Act more into alignment with the jurisdiction regimes for guardianship and reflects the reality that where a guardian is in place the preference will always be for that person to also be the nominee under the Scheme.

REVIEWABLE DECISIONS

14. What amendments could be made to the legislative framework (if any) to enhance the effectiveness and/or efficiency of the merit review process?

60. There has been confusion amongst participants and staff that arises because of the duplicative terminology around a review of a plan under sections 32 and 48 and review of a plan decision under section 100. This confusion has a detrimental effect on Participants ability to pursue their review rights because of the need for an internal review to be conducted before the AAT has jurisdiction.
61. The Agency submits that the operation of the Act would benefit from the language around different review types being clarified.

COMPENSATION AND DEBT RECOVERY

15. What amendments could be made to the legislative framework (if any) to

- a. Enhance the effectiveness and/or efficiency of the compensation and/or debt recovery processes?
- b. Ensure the NDIA has the required capacity to control costs in relation to the compensation and/or debt recovery processes?

62. From an implementation perspective, neither the compensation nor debt recovery clauses are designed to allow the Agency capacity to control costs.

Compensation

63. The Agency is concerned that in practice the operation of the compensation provisions in Chapter 5 of the Act potentially create an inequity between participants who pursue and use awards of compensation according to the intended purposes and those that do not and limits the Agency's ability to encourage appropriate application of the common law regime of damages in preference to the Scheme. This has a consequential impact on the ability of the Agency to control costs.

64. If a person uses their settlement (intended for lifetime care) to instead purchase a property then the Agency will not be able to reduce their funded supports because, under the Act, there is no recoverable amount. An identical participant who uses their settlement for the supports intended will have a recoverable amount and the legislative regime will allow a reduction of their funded supports. Both participants end up with the supports they need under the NDIS Act but the first participant is in a better financial situation.

65. The Agency would support a thorough review of the compensation clauses to find an equitable and reasonable way of handling the interaction between the Scheme and common law compensation.

GOVERNANCE

- 16. How well do the governance arrangements enable government to further the objects and principles of the NDIS Act?**
- 17. What amendments could be made to the legislative framework (if any) to enhance the effectiveness and/or efficiency of the NDIS's administration?**

The wider governance structure

66. In terms of implementation of the governance structure the Agency's observation is that the legislation has served the Agency well in this regard. Two elements of practice that have worked particularly well in implementation that could be considered for the legislation are:
 - Having the Principal Member of the IAC also a member of the Board; and
 - The CEO provides assistance to the Board (in a more generalised way than the directions envisaged by section 159(4)).

The role of the CEO

67. In practice, the role, functions and powers of the CEO have worked quite well. There are two areas from an implementation perspective that the Agency considers could be improved to assist with the effective administration of the Scheme:
 - Create an explicit regulation making power within section 210 where the Governor-General may allow the CEO to delegate their power to a class of person. This recognises that certain functions could be delivered more effectively and better outcomes achieved by non-government bodies in certain circumstances, for example where Local Area Co-ordination provided by community based groups can yield better results within the community; and
 - Increase the CEO's information gathering for people with a disability who have not yet or who decline to make an access request (discussed at paragraph 71 of this paper).

Reporting

68. The Agency understands the need for extensive reporting on the Scheme given the interest of stakeholder governments. In implementing the Scheme the Agency has found that the timing of providing the Quarterly Report is problematic given the availability of data and the depth of analysis needed to provide the best possible report. The Agency recommends the timing for delivery of the Quarterly report to the Ministerial Council, set out in section 174(1)(b), be extended to two months after the end of the period to which the report relates.

OTHER MATTERS

18. Are there any other aspects of the NDIS legislative framework that you believe are impacting on:

- a. Government's ability to further the objects and principles of the NDIS Act?**
- b. The efficiency of the NDIS's administration?**
- c. The capacity of the NDIA to control costs?**
- d. Other legislation, including State and Territory legislation?**
- e. The effectiveness of information sharing between the NDIA, jurisdictions and providers?**

69. The Agency relies on the ability to collect, analyse and share information in order to carry out all its function. In particular, information is crucial to the Agency's ability to:
- Deliver the Scheme (section 118(1)(a));
 - Collect, analyse and exchange data (section 118(1)(e));
 - Undertake research (section 118(1)(f)); and
 - Manage and advise on financial sustainability of the Scheme (section 118(1)(b)).
70. There are four main sections that give the Agency power to collect or receive information:
- Section 26 empowers the CEO (amongst other things) to request information from prospective participants and others for the purposes of deciding an access request;
 - Section 36 empowers the CEO (amongst other things) to request information from participants and other people for the purposes of deciding whether to approve a plan;
 - Section 55 provides what appears to be a broad coercive power for the CEO to require a person (other than a participant or prospective participant) to provide information on a range of matters; and
 - Section 60 creates a power for a person to collect protected information for the purposes of the Act.
71. From an implementation perspective, the information provisions in the Act have been problematic because the drafting of the above sections limits their application. In detail:
- The drafting of section 55 is very specific until the final power that allows the CEO to request information relating to functions of the Agency. A conservative reading of this section suggests that the Agency could not use section 55(2)(k) to gather information, for example, on people who have not yet made an access request.
 - Section 60 is similarly problematic because it allows a person to collect protection information for the purposes of the Act however the definition of protected information relates to information that is already held in the records of the Agency. In practice this means that section 60 cannot be used by the Agency to cover collection of information.
72. The Agency recommends that information gathering powers be amended to provide explicit coverage for the Agency to collect information for the purposes of the Act and to carry out its functions.